

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.1714 OF 2007
IN
SUIT NO.1230 OF 1989

M/s.Randhir Singh & Co.
and another

Plaintiffs

versus

M/s.Surjansingh Balbirsingh
and others

Defendants

Mr.K.J.Sonare for plaintiff.

Mr.A.V.Chatuphale for defendants 1 and 2.

CORAM : A.M.KHANWILKAR, J.
DATE : 16th October 2007

PC :-

1. Heard counsel for the parties. Perused the pleadings. Although the defendants have vehemently opposed recalling the order dated 11th October 2006 whereby the suit was dismissed for default, however, having regard to the fact situation of the present case, by way of indulgence, plaintiffs are entitled for reliefs in terms of prayer clauses (a) and (b). That is so because the mistake is obviously on account of the advocate. The matter had gone by default because of advocate and his Clerk's mistake which position is accepted in the affidavit in support

by the Clerk of the advocate. There is no reason to doubt this position. The plaintiffs were not to be benefited by dismissal of the suit. Obviously, therefore, the matter went by default which is not an intentional act of commission or omission of the plaintiffs themselves. As litigant should not suffer for the mistake of the advocate, as aforesaid, the plaintiffs are entitled to reliefs in terms of prayer clauses (a) and (b) on condition that the advocate on record for the plaintiffs shall personally pay a sum of Rs.1,500/- (Rs.Fifteen hundreds only) to High Court Legal Services Authority within one week from today. It is made clear that the amount of costs shall be borne by the advocate personally and not to be recovered from his client or representative of his client. The advocate assures to do so within one week from today.

2. It is further made clear that the relief in terms of prayer clause (c) is rejected, as the defendants 1 and 2 have already withdrawn the amount deposited with the Prothonotary & Senior Master after the dismissal of the suit on giving undertaking. If the plaintiffs eventually succeed, the defendants would be bound by their

undertaking given to the Prothonotary & Senior Master.

3. Motion is accordingly disposed of in the above terms.

(A.M.KHANWILKAR, J.)

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1. In anticipation that the plaintiffs advocate will comply with the order passed in the cognate Notice of Motion in time, the suit is ordered to be listed on 31st October 2007 under caption "for framing of issues".

(A.M.KHANWILKAR, J.)